

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**DASAY L. HOLLINQUEST,**

Plaintiff,

v.

**RUSS NICHOLS**, Physical Plant Manager;  
**PAUL HOEYE**, Assistant Superintendent;  
**JOHN MYRICK**, Superintendent; **MARK NOOTH**, Eastside Administrator;  
**C. DIETER**, Registered Nurse;  
**S. WHITBREAD**, Nurse Manager;  
**S. DEACON**, Grievance Coordinator  
Assistant; **ARNELL EYNON**, Grievance  
Coordinator; **LT. C. IRVING**;  
**LT. BOWMAN**; **MS. SCHUTT**, Executive  
Assistant; **DAVID PEDRO**, Operation  
Captain; **T. RIDLEY**, Assistant  
Superintendent; **B. WHELAN**, Nurse  
Manager,

Defendants.

Case No. 2:17-CV-00797-AC

OPINION AND ORDER

**MOSMAN, J.,**

On August 7, 2019, Magistrate Judge John Acosta issued his Findings and Recommendation (“F&R”) [68], recommending that Defendants’ Motion for Summary Judgment [52] should be GRANTED in part and DENIED in part, as follows: Defendants’ Motion as to Claims One and Two, to the extent the motion is premised on the Eighth Amendment, should be GRANTED, and it should be DENIED on all other grounds; Plaintiff’s Due Process argument, asserted in Claim Three of his Amended Complaint [8], should be

DISMISSED without leave to amend; and Plaintiff's retaliation claim should be DISMISSED without leave to amend. Plaintiff filed an objection [73] and Defendants filed a response [78].

### **DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

### **CONCLUSION**

Upon review, I agree with Judge Acosta's recommendation and I ADOPT the F&R [68] in full. I GRANT Defendants' Motion for Summary Judgment [52] on Claims One and Two, to the extent the motion is premised on the Eighth Amendment, and DENY the Motion on all other grounds. I DISMISS without leave to amend both Claim Three of Plaintiff's Amended Complaint [8] and Plaintiff's retaliation claim.

IT IS SO ORDERED.

DATED this 30 day of September, 2019.

*Michael W. Mosman*  
MICHAEL W. MOSMAN  
Chief United States District Judge